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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTONIO ZAMORA,

Defendant and Appellant.

C086412

(Super. Ct. No. 15F04075)

Appointed counsel for defendant Jose Antonio Zamora filed an opening brief setting forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) After reviewing the entire record, we have found a clerical error on the abstract of judgment that requires correction. We will direct the trial court to prepare a corrected abstract of judgment. Finding no other arguable error on appeal that would result in a disposition more favorable to defendant, we affirm the judgment.

FACTS AND PROCEEDINGS

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

At approximately 2:00 a.m., three men broke into Tony P.'s home through his daughter E.'s bedroom window. The men's faces were hidden by masks or hoods, they were wearing plastic gloves, and one was armed with a rifle. One of the masks was a black and white skull mask. One of the men was armed with a gun that belonged to Tony P.'s son.

The men grabbed Tony P. and restrained him with zip ties. They asked Tony P. for methamphetamine and money; he told them he had no money but had marijuana in his spare bedroom. The men separated Tony P. from his daughter, he resisted, and they beat him. Tony P. sustained injuries to his face, back of his head, right eye, nose, ear, and shoulder.

The men left and Tony P. and E. called 911. When Tony P. went outside, he saw his truck and the attached trailer were gone. The men had also taken Tony P.'s iPhone, 11 dried marijuana plants, five live marijuana plants, his son's gun, \$700 or \$800 in cash from under his bed, consisting of one \$100 bill and the rest \$20 bills, and a \$100 bill from E.'s room.

Shortly after the report, a California Highway Patrol helicopter pilot located the truck and trailer, with a black sedan following it. Following the pilot's directions, officers found the truck and confirmed it was Tony P.'s truck by the license plate. The officers tried to make a traffic stop, and as they did so, both the driver and passenger of the truck jumped out and ran. Officers caught the driver, one of the codefendants, and during the search of him found \$800, consisting of one \$100 bill and thirty-five \$20 bills. They also found two marijuana plants in the truck. A canine unit caught the passenger, the other codefendant. Officers also stopped the sedan and detained the driver,

defendant. There was a white mask with a skull painted on it, and a semiautomatic pistol in the sedan. Defendant also had a single \$100 bill in his pocket.

The officers brought Tony P. and E. to the scene for an in-field identification. E. did not identify any of the men, but recognized and identified the mask found in the sedan as one used in the robbery. Tony P. also positively identified the mask as worn by one of the robbers. Based on DNA testing, defendant was a potential contributor to DNA found on the mask and both codefendants were excluded as contributors. Tony P. also identified two of the codefendants, but could not identify defendant. Tony P. identified all three defendants at trial. A defense expert witness testified as to the unreliability of eyewitness identifications, particularly with in-field identifications.

The prosecutor filed an amended complaint deemed an information charging defendant with two counts of robbery (Pen. Code, § 211—counts one and two),¹ with an additional allegation that defendant and codefendants acted voluntarily and in concert in committing the robberies (§ 213, subd. (a)(1)(A)), carjacking (§ 215, subd. (a)—count three), and as to counts one through three, the information further alleged defendant used a firearm in commission of the offenses (§ 12022.53, subd. (b)). The information also charged defendant with counts related to his conduct while released on bail following the filing of the initial complaint. As to that conduct, the complaint charged defendant with failure to appear (§ 1320.5—count four), with an enhancement allegation that he committed this offense while on bail (§ 12022.1), and resisting arrest (§ 148, subd. (a)(1)—count five).

Prior to trial, defendant pleaded no contest to counts four and five and admitted the on-bail enhancement. A jury found defendant guilty on counts one through three and found true the allegation that defendant acted in concert with codefendants when

¹ Undesignated statutory references are to the Penal Code.

committing the robberies. The jury found not true the allegation defendant was personally armed during the commission of the offenses.

The trial court sentenced defendant to an aggregate term of 13 years eight months consisting of: nine years on count one, a consecutive two years (one-third the midterm) on count two, the midterm of five years on count three, stayed under section 654, a consecutive eight months (one-third the midterm) on count four, with an additional two years for the on-bail enhancement, and a concurrent 180 days on the misdemeanor resisting arrest. The trial court awarded defendant 1,048 days of presentence custody credit. Among other fines and fees, the trial court ordered defendant to pay a restitution fine of \$500 (§ 1202.4), imposed and suspended a parole revocation fine of \$500 (§ 1202.45), imposed a \$200 court operations fee (§ 1465.8), and a court facility fee of \$150 (Gov. Code, § 70373).

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende*, *supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date the People filed their opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

In our examination of the record, we have found a clerical error in the abstract of judgment that must be corrected. In orally pronouncing judgement, the trial court imposed the midterm on the carjacking conviction, without indicating the term of years, stayed under section 654. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [“Courts may correct clerical errors at any time, and appellate courts . . . that have properly assumed jurisdiction of cases have ordered correction of abstracts of judgment that did not accurately reflect the oral judgments of sentencing courts”].) The abstract of judgment reflects the sentence is stayed under section 654 but does not reflect the term imposed on this conviction. The midterm for carjacking is five years. (§ 215, subd. (b).) We

examined the entire record and found no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The clerk is directed to prepare a corrected abstract of judgment that includes the five-year sentence imposed on count three, stayed under section 654. The clerk shall forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

/s/
BLEASE, Acting P. J.

We concur:

/s/
MURRAY, J.

/s/
DUARTE, J.